No. 94-103

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

JOHN R. ADCOX, *et al.*,

Petitioners,

vs.

TELEDYNE, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA AND ITS LOCAL 99

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19 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a federal court has jurisdiction under § 301 to determine whether a collective bargaining agreement itself constitutes a violation of a pre-existing collective bargaining agreement.

II. Whether § 301 or 28 U.S.C. § 1337(a) confers jurisdiction over a claim against a union for breach of its duty of fair representation where the court has dismissed a breach of contract claim against the employer and the alleged breach of the duty of fair representation is inextricably intertwined with the alleged breach of contract claim.

PARTIES TO THE PROCEEDING

The Defendant-Respondents in the present case are Teledyne Monarch Rubber, a division of Teledyne Industries, Inc., which, in turn, is a wholly-owned subsidiary of Teledyne, Inc. (hereinafter "Teledyne"), the United Rubber, Cork, Linoleum and Plastic Workers of America International Union (hereinafter "URW International") and United Rubber Workers Local Union 99 (hereinafter "Local 99").

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Respondents, URW International Union and Local 99, request that the petition for writ of certiorari be denied.

COUNTERSTATEMENT OF THE CASE

Petitioners in this case seek to obtain a severance award benefit entitled a "Special Distribution", the existence of which was extinguished by a collectively-bargained plant closure agreement. Briefly, Petitioners were production and maintenance employees covered by a series of collective bargaining agreements negotiated over the years by Respondent Teledyne and Local 99, the most recent running from 1988 through June 15, 1991, when the plant closed. (Pet. App. C, D, E). These agreements included a Pension, Insurance and Service Award Agreement which contained provisions for employer-provided retiree medical benefits, and for a "Special Distribution" award for employees with five years of service, who had lost their jobs due to the permanent discontinuance of operations and who were "not eligible for a pension under any pension plan of the employer." (Pet. App. G).

The "Special Distribution" language had been negotiated years ago when there were both age and service requirements for pension vesting, and had been most recently updated in 1988 when an employee still needed ten years of service (no age requirement) in order to be entitled to a vested pension benefit under the pension plan. (R:50, Hartong deposition, p. 23; R:46, Kennedy deposition, p. 44; Pension Plan Section 4.9). Between the effective date of the 1988 collective bargaining agreement and the plant closure, the Tax Reform Act of 1986 (P.L. 99-154) amended § 411(a) of the Internal Revenue Code of 1986 and § 203(a) of the Employee Retirement Income Security Act of 1974 to require pension plans to adopt one of two vesting schedules, one of which entitled participants to a vested benefit after five years of service. Teledyne adopted this amendment to the plan effective January 2, 1989, thereby making every employee eligible for at least a deferred vested pension (every employee in the unit had at least five years service). (R:50, Hartong deposition, p. 23; R:37, Bixler deposition, pp. 15, 16, 58, 66, 72, 102).

In January 1991, Teledyne announced that it would close the Hartville facility and terminate the employees, effective June 15, 1991. (R:37, Boggs affidavit, Exhibit B; R:62, Plaintiffs' Exhibit 1). During the next six months, Teledyne and Local 99 engaged in numerous effects bargaining sessions with the goal of reaching a plant closure agreement. (R:37, Boggs affidavit, paragraphs 6-10).

During these negotiations, there were two main areas of contention: retirees' medical benefits and the Special Distribution. Local 99 maintained that the retirees, current and future, were entitled to lifetime medical benefits under the agreement, while Teledyne maintained that the benefits terminated with the expiration of the 1988 agreement (*i.e.* June 15, 1991). (R:37, Boggs affidavit, paragraphs 14-15). Local 99 further claimed that all employees who were otherwise eligible for the Special Distribution and who were not eligible for *immediate* pension benefits were entitled to a Special Distribution. (R:37, Boggs affidavit, paragraph 15).

Local 99 faced the near certainty of lengthy litigation and the possibility of losing not only the Special Distribution but also retiree medical benefits. (R:37, Boggs affidavit, paragraph 15). Under these circumstances, Local 99 negotiated a compromise. In lieu of the Special Distribution, Teledyne agreed to permit lump sum distributions of pension benefits so that employees would have access to immediate cash. (Pet. App. KK). Teledyne also agreed to provide lifetime retiree medical benefits subject to a cap on the company-paid premium, and to provide short-term health coverage to terminated employees with a cash buy-out option. (Pet. App. KK). The Plant Closing Agreement also included a broad release provision terminating all Teledyne liability under prior agreements. (Pet. App. KK).

The Plant Closing Agreement was initially rejected by the Local 99 membership on June 14, 1991. (R:37, Boggs affidavit, paragraph 19).

Afterward, in a telephone poll, a majority of the membership indicated interest in reconsidering the Plant Closure Agreement. (R:47, Boggs deposition, p. 26; R:37, Bixler deposition, pp. 36-37). On June 28, 1991, a meeting was held for the purpose of deciding whether there should be another vote. (R:37, Bixler deposition, pp. 35-36, and 39). The meeting became hostile, and those who were strongly opposed to the closure agreement called for a vote by "splitting the hall," and then physically intimidated many members into going to the "no" side of the hall. (R:37, Boggs affidavit, paragraph 20). The majority then voted against the motion for reconsideration. (R:37, Bixler deposition, p. 39).

In July 1991, "honorary withdrawal" cards were issued by Local 99 to all members except the officers. (R:52, May deposition, pp. 32-33). Under the URW Constitution, an honorary withdrawal card is automatically issued to an employee who has been terminated and who has not applied for a dues waiver. (R:70, Coss deposition, p. 19). Local 99 issued the withdrawal cards so that the employees could obtain a waiver of other unions' initiation fees if they were hired at union-organized plants. (R:47, Boggs deposition, pp. 54, 72-73).

Early in August 1991, Teledyne increased its offer concerning the buy-out of the short-term medical benefits provision. (R:37, Bixler deposition, p. 42; R:37, Boggs affidavit, paragraph 21). Local 99 then conducted a post card poll of the group affected by the closure to determine whether they wanted to vote on the Plant Closing Agreement with Teledyne's latest proposal. (R:37, Boggs affidavit, paragraph 22; R:37; Bixler deposition, pp. 85-87). Beginning in April 1991, Local 99 President Boggs had informed the membership that all employees who had been employed by Teledyne on January 30, 1991 (the date of Teledyne's closure announcement) would be permitted to vote on the closure agreement, and it was these individuals who received post cards. (R:37, Boggs affidavit, paragraph 22; R:37, Bixler deposition, pp.

45, 69, 85-87; R:52, May deposition, pp. 38-39). Because a majority of those returning post cards indicated a desire to vote on the agreement, a secret ballot vote was scheduled for August 22, 1991. (R:37, Boggs affidavit, paragraph 23; R:37, Bixler deposition, p. 87).

The URW Constitution does not deal with plant closings or plant closure agreements, but with respect to collective bargaining agreements for ongoing operations, provides that a collective bargaining agreement can be reconsidered if a majority of the members voting want reconsideration. (R:70, Coss deposition, pp. 17-19, 35). Although the URW Constitution does not require a secret ballot vote for collective bargaining agreements, it was Local 99's standard procedure for a contract vote. (R:37, Bixler deposition, pp. 44-45).

The Plant Closing Agreement was ratified by a majority of those voting on August 22, 1991. (R:37, Boggs affidavit, paragraph 24). The Agreement was signed by Union and Teledyne representatives on August 26, 1991, and was fully implemented. (Pet. App. KK; R:62, Plaintiffs' Exhibit 37).

Petitioners then filed this action, seeking to require Teledyne to pay the Special Distribution notwithstanding the release in the Plant Closing Agreement.

Petitioners' action was a "hybrid action" filed under § 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185(a) alleging that Teledyne had breached the 1988 agreement and that Local 99 had breached its duty of fair representation, when they negotiated and ratified the Plant Closing Agreement. Additionally, Petitioners alleged jurisdiction under 28 U.S.C. § 1337(a) and § 9(a), 29 U.S.C. § 159(a) with respect to the claimed union's breach of its duty of fair representation.

On cross motions for summary judgment, the district court dismissed Petitioners' claims for lack of federal jurisdiction and the Court of Appeals for the Sixth Circuit affirmed that ruling. The Sixth Circuit also held that (i) Local 99 had not breached its duty of fair representation because its actions were not arbitrary, discriminatory or in bad faith; (ii) Petitioners had no pre-existing vested right to the Special Distribution; and (iii) Plaintiffs' claim of promissory estoppel against Teledyne failed as Plaintiffs did not allege Teledyne ever promised the Special Distribution, and thus, could not show justifiable reliance.

SUMMARY OF ARGUMENT

Petitioners' arguments in support of granting a writ of certiorari are without merit. Although Petitioners argue that there is a split in the circuits on the issue of federal court jurisdiction to determine the "validity" or "existence" of a collective bargaining agreement under § 301, this does not accurately characterize either the rulings of the circuits or the issue raised in this case.

The primary issue raised in this case is whether federal courts have § 301 jurisdiction, where, as here, it is alleged that a collective bargaining agreement itself violated the employees' purported pre-existing rights. The plain language and legislative history of § 301 indicate that federal jurisdiction exists only in cases alleging "violation of contracts," and not "violation *by* contracts." The only circuits to have addressed this issue, the First, Third and Sixth Circuits, have all ruled the same way.

Furthermore assuming that § 301 jurisdiction did exist, it would be moot because the court also found that there was no pre-existing contractual right to the Special Distribution. Therefore there could have been no breach of contract.

Petitioners' second argument that independent jurisdiction

under § 1337(a) exists regarding the Union's alleged breach of its duty of fair representation is equally without merit. The Sixth Circuit correctly ruled that where the alleged breach of the duty of fair representation is interdependent with an alleged breach of contract claim; *i.e.*, a colorable claim of a contract breach is raised by the Plaintiff then independent § 1337 jurisdiction does not exist. Even assuming the Sixth Circuit erred in this finding, the issue is moot because the court of appeals further found that Local 99 did not breach its duty of fair representation.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO REASON TO REVIEW THE SIXTH CIRCUIT'S RULING THAT IT DID NOT HAVE JURISDICTION UNDER § 301 TO DETERMINE WHETHER THE PLANT CLOSING AGREEMENT ITSELF CONSTITUTED A VIOLATION OF THE 1988 COLLECTIVE BARGAINING AGREEMENT BY TELEDYNE.

Section 301 allows suits to be brought in the district courts "for violation of contracts between an employer and a labor organization . . ." 29 U.S.C. § 185(a). *See Smith v. Evening News Association*, 371 U.S. 195 (1962). The key phrase of the statute for purposes of this proceeding is "violation of contracts." The Congressional purpose of § 301 was to encourage collective bargaining by making collective bargaining agreements enforceable in the federal courts, *i.e.*, to allow suit for violation *of* such contracts. The Senate Report on the bill which became the LMRA stated with respect to § 301, "[c]onsequently, to encourage the making of agreements and to promote industrial peace though faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal

courts." S. Rep. No. 105, 80th Cong., 1st Sess., p. 16. The House of Representatives' sentiments concerning its version of § 301 were similar to the Senates: "[w]hen labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens." H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 46. This Court, upon review of the legislative history of § 301 in *Dowd Box Co. v. Courtney,* 368 U.S. 502, 509 (1962), concluded that § 301 was part of a "far-reaching and many-faceted legislative effort to promote the achievement and refinement of the collective bargaining process" by assuring "both parties to a collective bargaining agreement . . . that the contract they had negotiated would be honored." *Accord, Textile Workers v. Lincoln Mills,* 353 U.S. 448, 452-54 (1957).

Instead of alleging "violation *of* a contract," Petitioners sought to allege a "violation *by* a contract," contending that purported pre-existing rights had been violated by the Plant Closing Agreement. Such a claim does not fall under the express wording of § 301, nor is it encompassed within the Congressional purpose for the statute. Keeping in mind that collective bargaining agreements are typically negotiated every three years, with the rights of the parties changing and evolving from one agreement to the next, a suit under § 301 claiming the most recent agreement violates rights under earlier, expired agreements would never promote collective bargaining and achieve industrial peace.

Furthermore there is no split among the circuits on this issue. The Third Circuit addressed the issue first in *Adams v. Budd Co.,* 349 F.2d 368 (3d Cir. 1965). In that case, employees filed a § 301 action alleging that an existing agreement violated superseniority rights granted by earlier, expired agreements. The court explained that § 301 provided jurisdiction for claims of a "violation of a collective bargaining agreement" but that it did not provide

jurisdiction for claims of "an alleged violation *by* a labor contract of preexisting contract rights." 349 F.2d at 370. *Accord, Leskiw v. Local 1470, Int'l Bro. of Elec. Wkrs.*, 464 F.2d 721 (3d Cir. 1972), *cert. denied*, 409 U.S. 1041 (1972), and cited with approval in *Mack Trucks Inc. v. Intern. Union UAW*, 856 F.2d 579, 589 (3d Cir. 1988).

In *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972) the First Circuit cited *Adams* in support of its ruling denying § 301 jurisdiction, where the plaintiffs alleged that a collective bargaining agreement violated their pre-existing rights to be represented by another union. The court noted that "while . . . a district court might be obliged to consider the validity of a collective bargaining agreement *when asked to enforce one of its provisions* at the behest of the employees, . . . the present case is in a wholly different posture." *Id.*

The Sixth Circuit has likewise addressed the issue in *Heussner v. Nat'l Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989). Like the *Adcox* plaintiffs, the *Heussner* plaintiffs sued their union and their employer under § 301 alleging that an existing labor agreement violated rights to severance pay under an earlier agreement. Citing the Third Circuit *Mack Trucks* case in support, the court refused to confer jurisdiction under § 301 to determine whether the subsequent agreement violated rights that Heussner previously possessed under the earlier agreement. In *Adcox*, the Sixth Circuit found that the Plant Closing Agreement superseded the 1988 Agreement and cited *Heussner* as controlling.

None of the other cases cited by Petitioners conflict with the above rulings. In fact they all stand for the separate proposition that under § 301 a federal court may determine whether a contract "exists" as part of determining whether *that* contract was violated or is enforceable. *See Kozera v. Westchester-Fairfield Elec. Contractors*, 909 F.2d 48 (2d Cir. 1990), *cert denied*, 498 U.S.

1084 (1991); *Mack Trucks, Inc., supra*; *United Steelworkers v. Rome Indus., Inc.*, 437 F.2d 881 (5th Cir. 1970); *IBEW, Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499 (7th Cir. 1988); *Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 479 U.S. 1065 (1989); *McNally Pittsburgh, Inc. v. Int'l Ass'n of Bridge Workers*, 812 F.2d 615 (10th Cir. 1987); *Bd. of Trustees v. Universal Enters., Inc.*, 751 F.2d 1177 (11th Cir. 1985).

The *Adcox* case falls squarely within the *Adams/Heussner* line of cases, and not within the § 301 existence/enforcement cases cited above. The *Adcox* plaintiffs did not seek to enforce the Plant Closing Agreement. There is no issue that the Agreement "existed": it was reduced to writing, signed and implemented by the parties. Instead they have essentially asserted that the Plant Closing Agreement violated their rights under the 1988 Agreement. This removes them from the ambit of § 301.

Even assuming that § 301 jurisdiction did not exist, the issue would be moot because the Sixth Circuit also found that the Special Distribution did not "vest" by the contract, *i.e.*, there was no contractual entitlement to it in the first place. Thus the absence of a provision for the Special Distribution within the Plant Closing Agreement could not have been a contract violation cognizable under § 301.

II.

THERE IS NO REASON TO REVIEW THE SIXTH CIRCUIT'S RULING THAT NEITHER § 301 NOR § 1337 JURISDICTION EXISTED WITH RESPECT TO THE UNION'S ALLEGED BREACH OF THE DUTY OF FAIR REPRESENTATION BECAUSE THE ALLEGED BREACH WAS INTERDEPENDENT WITH AN ALLEGED CONTRACT VIOLATION CLAIM WHICH HAD BEEN DISMISSED.

Petitioners actually filed a hybrid § 301 claim which requires establishing *both* that the employer violated a collective bargaining agreement and that the union breached its duty of fair representation; *e.g.*, *Vaca v. Sipes,* 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight,* 424 U.S. 554 (1976). In their complaint they further alleged jurisdiction for the breach of the duty of fair representation claim under 28 U.S.C. § 1337(a) and 29 U.S.C. § 9(a).

In this case, the alleged breach of the duty of fair representation is interdependent with the alleged contract violation; *i.e.*, unless there was a contractual entitlement to the Special Distribution in the first place, there could be no arguable breach of the union's duty of fair representation in negotiating and/or ratifying a closure agreement which did not contain such a provision.

The Sixth Circuit correctly ruled that despite artful pleading, if a complaint states a quintessential § 301 claim, then § 9(a) and § 1337(a) jurisdiction is not available. As long as a complaint makes a colorable claim under a collective bargaining agreement, it must be construed as a § 301 action. There is no split in the circuits on this issue.

Because the *Adcox* Petitioners presented a colorable claim

under a collective bargaining agreement for the Special Distribution, § 9(a) and § 1337(a) jurisdiction against Local 99 does not exist. Because they are claiming a violation of their contractual rights *by* the Plant Closing Agreement rather than seeking to enforce a collective bargaining agreement, § 301 jurisdiction does not exist with respect to Local 99.

Even assuming that jurisdiction existed under either § 301 or § 1337(a), it would be moot because the court of appeals further ruled that Local 99 did not breach its duty of fair representation; *i.e.*, the Union's conduct was not arbitrary, discriminatory or in bad faith. *Airline Pilots Ass'n Int'l v. O'Neil*, 499 U.S. 65 (1991).

CONCLUSION

For the reasons set forth above and on the authorities cited, we respectfully submit that a writ of certiorari should not issue to the Court of Appeals for the Sixth Circuit and request that this petition be denied.

Respectfully submitted,

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